

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Thomas Shimota,

Petitioner

**THIRD DECLARATION OF PETITIONER
THOMAS SHIMOTA IN SUPPORT OF
WRIT OF PROHIBITION AND EMERGENCY STAY
OF SALE OF BUSINESS, B&T INVESTMENTS, LLC**

vs.

DISTRICT COURT CASE NO. : 70-cv-18-6768
APPELLATE COURT CASE NO. : A23-0776

Elizabeth Shimota,
Respondents

a

I, Petitioner, Thomas Shimota, hereby state and allege as follows:

1. I am the Petitioner and submit this Third Declaration in support of a Petition for Writ , Rule 120, and an emergency stay of the Orders of October 6, 2022, and Order of December 9, 2022 as to the dissolution of my business, B&T Investments, LLC and the sale of my real property, located at 1401 Main Street E. New Prague, MN.
2. I am supplementing my First Declaration with Exhibits 1-10, and my Second Declaration, Exhibits 11-24 which support the emergency stay of the sale of commercial property I have owned and invested in since 1994.
3. The New Prague commercial building is listed by Remax Advantage for \$650,000, as a business opportunity, office, retail/shopping center, warehouse. For the court's information, the listing information is attached here as **Exhibit 25**.
4. As of May 26, yesterday, at 8:11 pm, and as of today the Scott County property records do not reflect any sale, attached here as **Exhibit 26**.
5. I have sent a letter to prospective title companies attached here at **Exhibit 27**.
6. I have filed a notice of lis pendens attached here as **Exhibit 28**.
7. I am greatly concerned about the secrecy and lack of information. As I stated on May 22, 2023, Respondent attorney Cassandra Wolfgram announced during my motion hearing as to her fraud on the court and to vacate the orders, that she was withdrawing her injunction motion, pending since March 29, because the because the business real property had "sold" the Friday before, May 19.
8. B&T Investments, LLC is worth more than \$650,000, because the connected building at 1409 Main Street E., owned by Dave Gerold, to be sold to Ron Hertaus was selling for

EXHIBIT D

8. B&T Investments, LLC is worth more than \$650,000, because the connected building at 1409 Main Street E., owned by Dave Gerold, to be sold to Ron Hertaus was selling for \$650,000 and he received higher offers while waiting for Ron Hertaus to buy his *vacant* property.
9. The original list price is \$650,000 that Respondent attorneys and Elizabeth Shimota have is a "fire sale" price. So too, the \$550,000 price on the unsigned Commercial Purchase contract is even more a fire sale.
10. B&T Investments, LLC is a "turn key" business. Since November 2016, when my Napa store sold and we moved out, I secured leases with Star Group, Reliable Recovery, and Endeavor Trikes, rents are collected of \$4,750 per month. The mortgage is \$1908/mo. I paid down the mortgage, originally \$660,000 to approximately \$110,000 (as of the date of the Orders)
11. Plaintiff/Respondents through the wrongful Orders of Respondent Court, is facilitating a fire sale of my business interests, B&T Investments, LLC, to hurry up and pay her judgments, that are only personal to me, and do not involve my business, not a party, or B&T, Investments, as explained above. B&T Investments, LLC is not a judgment debtor.
12. The irreparable damage by void orders and forced sale is evident.
13. To be continued.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: May 27, 2023



Thomas Shimota

360 Property View

1401 Main Street E, New Prague, MN 56071-3666

Commercial

Business Opportunity, Office, Retail/Shopping Center, Warehouse

List #: **6305736**

Status: **Pending**

List Price: **\$650,000**

Orig List Pr: **\$650,000**



Property ID: **240520020**

For Sale/Lease: **For Sale**

Lease Type:

Tax Amount: **\$7,176**

Tax Year: **2022**

Assess Bal: **\$0**

Tax w/ Assess: **\$7,176**

Assess Pend: **No**

Homestead: **No**

Building Fin SF: **6,276**

Building SF:

Const Status: **Previously Owned**

Total Units: **1.00**

Found Size: **6,276**

Year Built: **1983**

Acres/Sqft: **1.220/53,143**

Lot Dim: **169x375x119**

Current Use: **Commercial, Office, Retail, Storage Facility, Warehouse**

Yearly/Seasonal: **Yearly**

County: **Scott-MN**

Postal City: **New Prague**

List Date: **11/18/2022**

Rcvd by MLS: **11/18/2022**

DQM: **77**

CDQM/PDQM: **77/77**

Directions: **HWY 19 JUST ON EAST SIDE OF NEW PRAGUE**

Off Market Date: **02/03/2023**

Proj Close Date: **03/31/2023**

Date Closed:

Selling Agent: **Patrick Sullivan 952-457-0479**

Selling Office: **RE/MAX Advantage Plus 7**

General Information

Legal Desc: **SUBDIVISIONNAME SUNSHINE ACRES LOT 002 BLOCK 001 SUBDIVISIONCD 24052**

School District: **721 - New Prague Area Schools** Section/Township/Range:

(952-758-1700)

Location:

Fract Ownr: **No**

Land Lease?: **No**

Comp/Dev/Sub: **Sunshine Acres**

Rental License:

Zoning: **Business/Commercial**

Power Company:

Accessibility: **No Stairs External, No Stairs Internal**

Structure Information

Heat: **Forced Air**

Exterior: **Steel Siding**

Fuel: **Electric, Natural Gas**

Water: **City Water/Connected**

Garage: **0**

Sewer: **City Sewer/Connected**

Oth Prkg: **0**

Features

Parking: **Paved Lot, Uncovered/Open**

Utilities: **None Available**

Sale Includes: **Building, Land, Leases**

Unit Information

Efficiencies: **# 1 BR Units:**

2 BR Units:

3 BR Units:

Compensation & Financial

Buy Brkr Comp: **2.70%** Sub-Agt Comp:

List Type: **Exclusive Right**

Facilitator Comp: **1.00%**

Variable Rate: **Yes**

Sellers Terms: **Cash, Conventional**

Lockbox Type:

Lockbox Source:

Assume Loan:

Listing Conditions: **Standard**

Agent/Office Information

Listing Agent: **Trevor Hour 612-799-1026**

Listing Office: **RE/MAX Advantage Plus**

CoList Agent: **Patrick Sullivan 952-457-0479**

CoList Office: **RE/MAX Advantage Plus**

Appointments: **ShowingTime**

Office Phone: **952-758-4464**

Office Phone: **952-758-4464**

MLS #: **6305736** **1401 Main St E, New Prague, MN 56071-3666**

Information Deemed Reliable But Not Guaranteed. Copyright (c) 2023 Regional Multiple Listing Service of Minnesota, Inc. All Rights Reserved.

EXHIBIT 25

3/14/2023, 10:21 AM